

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION**

ASD SPECIALTY HEALTHCARE, INC. d/b/a  
ONCOLOGY SUPPLY COMPANY  
2801 Horace Shepard Drive  
Dothan, Alabama 36303,

Plaintiff,

V.

ROBERT G. HICKES, M.D. and ROBERT G.  
HICKES, M.D., P.C.  
1301 Trumansburg Road, Suite Q  
Ithaca, NY 14850,

Defendant.

CIVIL ACTION

NO.: 1:05-cv-592-MHT

## **PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT**

The plaintiff, ASD Specialty Healthcare, Inc., d/b/a Oncology Supply Company, by and through its counsel, hereby moves this Honorable Court pursuant to Federal Rule of Civil Procedure 56 for summary judgment against the defendant Robert G. Hickes, M.D., P.C. because there are no disputed issues of material fact and it is entitled to judgment as a matter of law. In support of this motion, the plaintiff relies upon the statements and legal arguments contained within the concurrently-filed memorandum of law supporting this motion, and the narrative summary of undisputed facts contained therein, which are incorporated herein by this reference, as well as the attached exhibits:

Exhibit 1: Complaint

Exhibit 2: Plaintiff's First Set of Requests for Admissions Addressed to Defendant Robert G. Hickes, M.D.

Exhibit 3: Defendant Robert G. Hickes, M.D.'s Response to Request for Admission

Exhibit 4: Defendant Robert G. Hickes, M.D.'s Amended Response to Request for Admission

Exhibit 5: Plaintiff's First Amended Complaint

Exhibit 6: Defendant Robert G. Hickes, M.D., P.C.'s Answer

Plaintiff also submits a proposed Order granting this motion which is attached as Exhibit 7.

WHEREFORE, premises considered, Plaintiff respectfully requests that the Court enter an order granting its motion for summary judgment.

Respectfully submitted,

s/Heath A. Fite  
Heath A. Fite (FIT011)  
Attorney for Plaintiff

**OF COUNSEL:**

**Burr & Forman, LLP**

3100 Wachovia Tower

420 North 20<sup>th</sup> Street

Birmingham, Alabama 35203

Telephone: (205) 251-3000

Facsimile: (205) 458-5100

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of April, 2006, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all properly registered parties, including Clyde Ellis Brazeal, III.

s/Heath A. Fite  
Of Counsel